

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

AKIVA AVIKAIDA ISRAEL,

No. 2:21-cv-01027-DAD-DMC (PC)

Plaintiff,

v.

S. GYLES, et al.,

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
CERTAIN CLAIMS AND DEFENDANTS

Defendants.

(Doc. No. 34)

Plaintiff Akiva Avikaida Israel is a state prisoner appearing *pro se* and *in forma pauperis* in this civil rights action brought pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On July 25, 2023, the assigned magistrate judge screened plaintiffs first amended complaint and found that some of plaintiff's claims were potentially cognizable whereas other claims were not sufficiently alleged. (Doc. No. 26.) As to the latter, the magistrate judge identified pleading deficiencies and provided guidance regarding the applicable legal standards governing those claims. (*Id.*) Plaintiff was given an opportunity to file a second amended complaint to attempt to cure the deficiencies that the magistrate judge had identified. (*Id.* at 19–20.) Despite receiving several extensions of time in which to do so, plaintiff did not file a second amended complaint. (Doc. Nos. 28, 30, 32.)

////

1 Accordingly, on May 17, 2024, the magistrate judge issued findings and recommendations
2 recommending that this action proceed only on the claims found to be cognizable in the July 25,
3 2023 screening order and that all other claims and named defendants be dismissed from this
4 action due to plaintiff's failure to state a cognizable claim against them. (Doc. No. at 34.)
5 Specifically, the magistrate judge recommended that this case proceed only on the following three
6 claims: (i) a First Amendment claim brought against defendant Gyles based on the alleged
7 interference with plaintiff's legal mail in 2021; (ii) a First Amendment retaliation claim brought
8 against defendant Szichak; and (iii) an Eighth Amendment sexual harassment claim brought
9 against defendant Szichak. (*Id.* at 3.) The magistrate judge further recommended that all other
10 claims and defendants be dismissed due to plaintiff's failure to state a cognizable claim against
11 them. (*Id.*)

12 The pending findings and recommendations were served on plaintiff and contained notice
13 that any objections thereto were to be filed within fourteen (14) days after service. (Doc. No. 34
14 at 3.) To date, no objections have been filed, and the time in which to do so has passed.

15 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
16 *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the
17 findings and recommendations are supported by the record and by proper analysis.

18 Accordingly:

- 19 1. The findings and recommendations issued on May 17, 2024 (Doc. No. 34) are
20 adopted in full;
- 21 2. This action shall proceed on plaintiff's First Amendment claim brought against
22 defendant Gyles based on the alleged interference with plaintiff's legal mail in
23 2021; plaintiff's First Amendment retaliation claim brought against defendant
24 Szichak; and plaintiff's Eighth Amendment sexual harassment claim brought
25 against defendant Szichak;
- 26 3. All other claims brought by plaintiff in this action are dismissed;
- 27 4. Defendants A. Echhart, B. Holmes, E. Hobbs, M.K., G. Camp, M. Purintun, R.
28 Roy, Deb K., and A. Phillips are terminated as named defendants in this action;

5. The Clerk of the Court is directed to update the docket to reflect that defendants A. Echhart, B. Holmes, E. Hobbs, M.K., G. Camp, M. Purintun, R. Roy, Deb K., and A. Phillips have been terminated from this action; and

6. This action is referred back to the assigned magistrate judge for further proceedings consistent with this order.

IT IS SO ORDERED.

Dated: June 17, 2024

Dale A. Drozd
DALE A. DROZD
UNITED STATES DISTRICT JUDGE